

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: )  
 ) Case No. 19-03167  
Victoria L. Graff & ) Chapter 13  
Bradford J. Mahan. )  
 )  
Debtors. ) Honorable Judge LaShonda A. Hunt  
 )

**NOTICE OF MOTION**

TO: Attached Service List

PLEASE TAKE NOTICE that on October 21, 2019 at 9:30 a.m., or as soon thereafter as counsel may be heard, we will appear before the Honorable Judge LaShonda A. Hunt, or any judge sitting in her stead, in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 719, Chicago, IL 60604, and then and there present the Motion of IH3 Property Illinois LP for Relief from the Automatic Stay as to the Real Property Commonly Known as 4305 Weber Drive, Rolling Meadows, IL 60008, a copy of which is attached hereto and served upon you.

Respectfully Submitted,

Miles V. Cohen  
[mcohen@skcounsel.com](mailto:mcohen@skcounsel.com)  
Scott & Kraus, LLC  
150 S. Wacker Drive, Suite 2900  
Chicago, Illinois 60606  
312-327-1059 (telephone)  
312-327-1051 (facsimile)

By: /s/ Miles V. Cohen  
One of the attorneys for  
IH3 Property Illinois LP,  
a Delaware limited partnership

**CERTIFICATE OF SERVICE**

I, Gretchen Filarski, a non-attorney, state I caused a copy of the aforementioned Notice of Motion and Motion of IH3 Property Illinois LP for Relief from the Automatic Stay as to the Real Property Commonly Known as 4305 Weber Drive, Rolling Meadows, IL 60008, to be served via electronic notice on the parties appearing in the Court's CM/ECF system and upon the attached Service List by placing a copy with proper postage affixed in the U.S. Mail at 150 S. Wacker Drive, Chicago, Illinois 60606 on September 30, 2019 at or before 5:00 PM.



Gretchen Filarski

Subscribed and sworn to me  
before this 30<sup>th</sup> day of September, 2019.



**SERVICE LIST**

**Via CM/ECF**

Patrick S. Layng  
Office of the U.S. Trustee, Region 11  
219 S. Dearborn Street  
Room 873  
Chicago, IL 60604  
*U.S. Trustee*

Marilyn O. Marshall  
224 South Michigan, Ste. 800  
Chicago, IL 60604  
*Trustee*

David M. Siegel  
David M. Siegel & Associates  
790 Chaddick Drive  
Wheeling, IL 60090  
*Debtors' Attorneys*

**Via First Class U.S. Mail**

Victoria L. Graff  
Bradford J. Mahan  
4305 Weber Drive  
Rolling Meadows, IL 60008  
*Debtors*

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Debtors. ) Honorable Judge LaShonda A. Hunt  
 )  
 ) Hearing Date: October 21, 2019  
 ) Hearing Time: 9:30 a.m.  
)

**MOTION OF IH3 PROPERTY ILLINOIS LP FOR RELIEF FROM THE AUTOMATIC  
STAY AS TO THE REAL PROPERTY COMMONLY KNOWN AS  
4305 WEBER DRIVE, ROLLING MEADOWS, IL 60008**

IH3 Property Illinois LP, a Delaware limited partnership, (the “Movant”), by its attorneys, Scott & Kraus, LLC, pursuant to Section 362(d) and 365(b)(1) of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), and Rules 4001, 6007(b) and 9014 of the Federal Rules of the Bankruptcy Procedure (the “Bankruptcy Rules”), respectfully submits this Motion for Relief from the Automatic Stay as to the real property commonly known as 4305 Weber Drive, Rolling Meadows, IL 60008 (“Property”) (“the Motion”), so that it may pursue its right to possession of the Property. In support of the Motion, Movant states as follows:

**JURISDICTION**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Court is the appropriate venue pursuant to 28 U.S.C. §§ 1408. This matter constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (G). The statutory and rule-based predicates for the relief sought herein are Section 362(D) of the Bankruptcy Code and Rules 4001(a)(1)-(a)(3) and 9014 of the Bankruptcy Rules.

## **BACKGROUND**

2. Victoria L. Graff and Bradford J. Mahan (collectively, the “Debtors”) filed their Voluntary Petition for relief under Chapter 13 of the Bankruptcy Code on February 6, 2019 (“Petition Date”). [See Docket at No. 1].

3. The Meeting of Creditors pursuant to Section 341(a) of the Bankruptcy Code was held on March 5, 2019. [See Docket at No. 7].

4. As of the Petition Date, IH3 Property Illinois LP was and still is the owner of the property commonly known as 4305 Weber Drive, Rolling Meadows, IL 60008.

5. On or about July 1, 2019, Movant and Debtors entered into a lease agreement, whereby Debtors agreed to pay Movant the sum of Two Thousand Eighty and 00/100 Dollars (\$2,080.00) per month for the length of the lease term, in exchange for the right to occupy the Property (the “Lease”). A true and correct copy of the Lease is attached hereto and made a part hereof as Exhibit “1”.

6. The Lease term commenced on July 10, 2019 and runs for the period through February 9, 2021, unless sooner terminated for, among other reasons, Debtors’ failure to pay the rent reserved when due.

7. As of the Petition Date, the Debtors were in arrears in their payment of the rent due in the amount of \$2,790.00 for the period of August 2019 through September 2019.

8. The Debtors have failed to satisfy the terms of the Lease and have failed to pay Rent that has come due under the Lease for a total amount due of \$2,790.00. A true and correct copy of the Debtors’ Resident Ledger is attached hereto and made a part hereof as Exhibit “2”.

9. Movant seeks relief from the automatic stay so as to proceed with state court proceedings in the Circuit Court of Cook County and recover its lawful possession of the Property.

## ARGUMENT

10. Section 362(d) of the Bankruptcy Code provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if –
  - a. the debtor does not have an equity in such property; and
  - b. such property is not necessary to an effective reorganization.

11. Further Section 365(b)(1) provides that:

If there has been default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to the satisfaction of any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption ...

12. IH3 Property Illinois LP is not adequately protected because Debtors are using and occupying the Property without making payment to IH3 Property Illinois LP for the current use and occupancy of the Property. The value of the Property is being diminished by Debtors' continued use and occupancy.

13. Therefore, pursuant to Section 362(d) and 365(b) of the Bankruptcy Code, the automatic stay should be lifted so that Movant may proceed to terminate the lease and obtain possession of the Property through a forcible entry and detainer proceeding in Illinois.

14. Moreover, this Court has the authority to order that Rule 4001(a)(3) not apply to any Order granting this Motion, and Movant requests that this Court so order.

WHEREFORE, Movant, IH3 Property Illinois LP, a Delaware limited partnership, prays that this Honorable Court enter an Order, pursuant to Section 362(d) of the Bankruptcy Code, modifying the automatic stay to permit IH3 Property Illinois LP, a Delaware limited partnership to exercise its state court remedies to obtain possession of the Property commonly known as 4305 Weber Drive, Rolling Meadows, IL 60008, and further find that Bankruptcy Rule 4001(a)(3) shall not apply so that IH3 Property Illinois LP, a Delaware limited partnership, may immediately, and for any and all further relief deemed just and equitable.

Respectfully Submitted,

By: /s/ Miles V. Cohen  
One of the attorneys for  
IH3 Property Illinois LP,  
a Delaware limited partnership

September 30, 2019

Miles V. Cohen  
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